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Andrea S. Thompson
District Clerk
Collin County, Texas
By Kim Sherrin Deputy

CAUSE NO. 429-01401-2014

TRAXXAS LP,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
FELD MOTOR SPORTS, INC.,	§	
	§	
	§	
<i>Defendant.</i>	§	<u> </u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Traxxas, LP ("Traxxas"), files this Original Petition on personal knowledge as to all matters regarding itself and upon information and belief as to all other matters, against Defendant Feld Motor Sports, Inc. ("Feld" or "Defendant"), as follows:

I.
DISCOVERY CONTROL PLAN

1. Discovery is to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

II.
PARTIES

2. Plaintiff is a Texas limited partnership with its principal place of business in Collin County, Texas.

3. Defendant Feld is a Delaware corporation, and may be served with

service of process upon its registered agent, Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

III. JURISDICTION AND VENUE

4. Pursuant to Sections 24.007 *et seq.* of the Texas Government Code, this Court has jurisdiction over this action by virtue of the relief sought herein and because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

5. While Plaintiff does not seek any monetary relief other than the recovery of attorneys' fees and costs, this dispute involves claims in allegedly excess of \$1,000,000.00.

6. Pursuant to Sections 15.001-15.066 of the Texas Civil Practice and Remedies Code, venue is proper in this county because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Collin County. Venue is further proper in Collin County because Plaintiff resides in Collin County, and Defendant does not reside in any county in Texas.

7. The Court maintains personal jurisdiction over Defendant because it entered into a contract performable in whole or in part in the State of Texas, Defendant has general and continuous contacts with the State of Texas, and Defendant

maintains a registered agent in the State of Texas for the purpose of doing business herein.

IV.
FACTUAL BACKGROUND

8. On or about September 20, 2010, Traxxas and Feld entered into the Monster Jam Merchandise License Agreement (the "License Agreement").

9. Pursuant to the License Agreement, Traxxas obtained the right to use certain intellectual property of Feld in the marketing and sale of Traxxas' radio controlled trucks. In return, and in accordance with the terms of the License Agreement, Feld was paid a royalty on those sales.

10. A dispute has arisen between Traxxas and Feld concerning the interpretation of Exhibit A to the License Agreement.

11. Feld maintains that it is entitled to a royalty on any Traxxas vehicle that is sold under the name "Stampede."

12. The relevant provision of the License Agreement is as follows:

2. Licensed Articles: Hobby-grade battery-operated remote control operated monster truck vehicles ("R/C Vehicle Units") and monster truck vehicle bodies ("R/C Bodies") branded with the Property. Licensed Articles shall include a minimum of four (4) different monster truck models of R/C Bodies each year, for each year during the Term other than 2010.

3. Territory: Worldwide

4. Term: Oct 1, 2010 – Dec 31, 2013

5. Royalty Rate: In determining the number of Licensed Articles on which Licensor will receive royalties, "Licensed Articles" shall be deemed to include all R/C Vehicle Units and R/C Bodies manufactured with the Stampede chassis and/or Stampede body, whether or not branded with the Property or "Stampede". Licensee acknowledges that Licensor has waived royalties on the first 30,000 units of such Licensed Articles in reliance upon Licensee's representation that Licensee will enter into a written sponsorship agreement with Licensor for Licensee's sponsorship of at least one Licensor-produced property, which will be in effect during each year of the Term commencing in 2011. Notwithstanding the foregoing, for each year other than 2010 during the Term that the parties do not have an executed sponsorship agreement relating to a Licensor-produced property, Licensee agrees to pay Licensor a royalty of One Percent (1%) of Net Sales on the first 30,000 R/C Vehicle Units during that contractual year, with such royalty to be paid within thirty (30) days of the end of the applicable calendar year during the Term. After Licensee has sold 30,000 R/C Vehicle Units, royalties on the next R/C Vehicle Units sold shall be calculated for calendar years 2011, 2012 and 2013 as follows (each year, a "Term Year"):

Three Percent (3%) of Net Sales on the first 30,001–40,000 R/C Vehicle Units sold each Term Year;
Four Percent (4%) of Net Sales on the first 40,001–50,000 R/C Vehicle Units sold each Term Year; and
Five Percent (5%) of Net Sales on the first 50,001 R/C Vehicle Units sold each Term Year and any R/C Vehicle Units sold in excess of 50,001.

For R/C Bodies sold by Licensee, Licensee shall pay Licensor a royalty of Eight Percent (8%) of Net Sales.

For the avoidance of doubt, when reporting royalties Licensee shall separately identify by Territory the sales and royalties related to each Licensed Article.

13. Prior to entering the License Agreement, Traxxas and Feld had discussions regarding the choice of chassis that the parties agreed to use to create the branded Monster Jam ("MJ") models. Feld chose, and Traxxas agreed to base the Agreement on the 2WD Brushed Electric Stampede ("Brushed Stampede"). At that time the Stampede lineup of products, in addition to the Brushed Stampede, included the 2WD Brushless Stampede ("Brushless Stampede"), the Nitro Stampede and the Stampede 4X4 (the "Excluded Stampede Models").

14. After reviewing the different Stampede models the parties agreed that the licensed products would only use the Brushed Stampede chassis and power system. The parties also agreed that the price points of the Excluded Stampede Models were too high, it would complicate the manufacturing and conversion of all the models, and it would cause confusion in the market place.

15. Within the License Agreement, the “Stampede chassis and/or Stampede body” are undefined, vague and ambiguous, and have allowed Feld to assert that it is entitled to royalties on the sales of the Excluded Stampede Models, resulting in an obligation by Traxxas to Feld in excess of \$1,000,000.00.

16. Plaintiff therefore requests a declaration that “Stampede chassis and/or Stampede body” do not include the Excluded Stampede Models.

**V.
CLAIM**

COUNT ONE: Declaratory Relief.

17. Plaintiff repeats and realleges the allegations in paragraphs above and below.

18. An actual and concrete controversy exists among the parties in that Defendant has taken the position that Plaintiff owes more money under the License Agreement than the parties agreed to.

19. Plaintiff is entitled to a declaration that it does not owe Defendant royalties on the Excluded Stampede Models.

20. Pursuant to Civil Practice & Remedies Code Section 37.009, and the License Agreement, Plaintiff also seeks costs and attorneys' fees as are equitable and just.

VI.
REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court:

- A. Grant Plaintiff declaratory judgment that the License Agreement does not require payment on the Excluded Stampede Models;
- B. Award Plaintiff its reasonable attorneys' fees and costs that are equitable and just; and
- C. Grant Plaintiff such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,



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